

IN THE UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF ALABAMA  
NORTHERN DIVISION

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DEBRA P. HACKETT, CLK  
U.S. DISTRICT COURT  
MIDDLE DISTRICT ALA

HELEN MOODY and CATHERINE )  
KEATON, )

Plaintiff, )

v. )

Case No. 2:07 CV 318-A

LOWE'S HOME CENTERS, INC., )  
ALLSTATE INSURANCE )  
COMPANY, and SHAWN DEE )  
THORNTON, )

Defendants. )

NOTICE OF REMOVAL

COMES NOW Defendant Lowe's Home Centers, Inc., by and through counsel, and hereby files and serves this Notice of Removal, removing this action from the Circuit Court of Montgomery County, Alabama to the United States District Court for the Middle District of Alabama, Northern Division. In support thereof, the Defendant states as follows.

1. This civil action was initiated in the Circuit Court of Montgomery County, Alabama as case number CV 07-900005. The Complaint was served upon this Defendant on March 23, 2007. A true and accurate copy of the Complaint is attached hereto as Exhibit "A."

2. This Notice of Removal is filed and served within 30 days of the date of service as described above.

3. This action is being removed to Federal District Court on the basis of diversity jurisdiction as allowed by 28 U.S.C. § 1332.

4. The United States District Court for the Middle District of Alabama, Northern Division, has original jurisdiction under 28 U.S.C. § 1332. This action is removable under 28 U.S.C. § 1441.

5. This Court has jurisdiction under 28 U.S.C. § 1332, and removal is proper pursuant to 28 U.S.C. § 1441, because there is diversity of citizenship. The Plaintiffs Helen Moody and Catherine Keaton are citizens of the State of New York. Defendant Lowe's Home Centers, Inc., is a North Carolina corporation, with its home office and principle place of business North Carolina; Defendant Allstate Insurance is a Illinois corporation with a principle place of business in Chicago, Illinois; and Defendant Shawn Dee Thornton is a resident of Montgomery, Alabama. As such, complete diversity of citizenship exists.

6. The amount is controversy of this matter exceeds the sum of \$75,000. According to the Plaintiffs' Complaint, both Helen Moody and Catherine Keaton claim to have suffered severe personal injuries in the automobile accident made the basis of this lawsuit. (See paragraph 15 of the Plaintiffs' Complaint, attached hereto as Exhibit "A"). Further, both Plaintiffs claim to have incurred substantial medical expenses and have sustained permanent disabilities. (See paragraph 18 of the Plaintiffs' Complaint). Based on representations of Plaintiffs' counsel, defense counsel believes that the medical bills incurred to date are in the range of at least \$30,000. Further, both of the Plaintiffs have claimed a

right to recover punitive damages from the Defendants. As such, the amount in controversy exceeds \$75,000.

7. This Notice of Filing Notice of Removal and other accompanying papers and notices have been served upon all counsel of record and adverse parties and filed with the Clerk of the State of Court from which this action is being removed, the Circuit Court of Montgomery County, Alabama, as required by 28 U.S.C. § 1446(d). A copy of said Notice of Filing Notice of Removal is attached hereto as Exhibit "B."

8. This Notice is signed pursuant to Rule 11 of the Federal Rules of Civil Procedure, as required by 28 U.S.C. § 1446(a) as amended, which eliminates the requirement for a verified petition.

9. A copy of all pleadings, papers, Notices, and Orders, served upon the defendants and which consist of the Record of the Clerk of the Circuit Court of Lamar County, Alabama, have been attached hereto as Exhibit "A."

10. For the reasons stated herein, this Federal District Court has jurisdiction of this case pursuant to 28 U.S.C. § 1332 and the case is properly removed pursuant to 28 U.S.C. 1441.

Respectfully submitted this the 9 day of April, 2007.

  
\_\_\_\_\_  
**JOSEPH E. STOTT - AS B-4163-T71J**

Attorney for Defendant Lowe's Home Centers, Inc.

**OF COUNSEL:**

**SCOTT, SULLIVAN, STREETMAN & FOX, P.C.**

2450 Valleydale Road  
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IN THE UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF ALABAMA  
NORTHERN DIVISION

HELEN MOODY and CATHERINE )  
KEATON, )

Plaintiff, )

v. )

Case No. 2:07cv 318-A

LOWE'S HOME CENTERS, INC., )  
ALLSTATE INSURANCE )  
COMPANY, and SHAWN DEE )  
THORNTON, )

Defendants. )

CERTIFICATE OF SERVICE

I hereby certify that I have on April 9, 2007 served a copy of the foregoing on the following attorneys of record by placing a copy of same in the U.S. Mail:

Jason E. Gammons, Esq.  
Mark M. Hogewood, Esq.  
Wallace, Jordan, Ratliff & Brandt, LLC  
Post Office Box 530910  
Birmingham, AL 35253

Celest Patton Armstrong, Esq.  
Varner & Associates  
Suite 200, 2600 Meadow Brook Street  
2600 Corporate Drive  
Birmingham, AL 35242

Mr. Shawn Dee Thornton  
407 Green Ridge Road  
Montgomery, AL 36109

  
\_\_\_\_\_  
OF COUNSEL

## **EXHIBIT "A"**

IN THE CIRCUIT COURT OF MONTGOMERY COUNTY, ALABAMA

HELEN MOODY, an individual, and )  
CATHERINE KEATON, an individual, )

Plaintiffs, )

vs. )

CIVIL ACTION NO.:

LOWE'S HOME CENTERS, INC., a )  
corporation, ALLSTATE INSURANCE )  
COMPANY, a corporation, SHAWN )  
DEE THORNTON, an individual, )

CV-07-900005

Defendants. )

ALIAS SUMMONS

This service by certified mail of this summons is initiated upon the written request of plaintiff's attorney pursuant to the Alabama Rules of Civil Procedure.

NOTICE TO: Lowe's Home Centers, Inc.  
c/o CSC Lawyers Incorporating SVC, Inc.  
150 South Perry Street  
Montgomery, AL 36104

The Complaint which is attached to this Summons is important and you must take immediate action to protect your rights. You are required to mail or hand deliver a copy of a written Answer, either admitting or denying each allegation in the Complaint, to MARK M. HOGEWOOD, ESQ. and/or JASON E. GAMMONS, ESQ., the lawyers for Plaintiff Helen Moody and Catherine Keaton, whose address is: WALLACE, JORDAN, RATLIFF, & BRANDT, 800 Shades Creek Parkway, Suite 400, Birmingham, Alabama 35209.

THIS ANSWER MUST BE MAILED OR DELIVERED WITHIN THIRTY (30) DAYS FROM THE DATE THIS SUMMONS AND COMPLAINT WERE DELIVERED TO YOU, OR A JUDGMENT OF DEFAULT MAY BE ENTERED AGAINST YOU FOR THE MONEY OR OTHER THINGS DEMANDED IN THE COMPLAINT. You must also file the original of your Answer with the Clerk of this Court within a reasonable time afterward.

CLERK

By:

*Melissa Pittenger*  
Deputy Clerk

Dated:

*3/20/07*

FILED  
CIRCUIT COURT OF  
MONTGOMERY COUNTY  
2007 MAR - 7 PM 12:47

  
**IN THE CIRCUIT COURT OF MONTGOMERY COUNTY, ALABAMA**

**HELEN MOODY, an individual, and )  
CATHERINE KEATON, an individual, )**

**Plaintiffs, )**

**vs. )**

**CIVIL ACTION NO.:**

CV-2007-900005

**LOWE'S HOME CENTERS, INC., a )  
corporation, ALLSTATE INSURANCE )  
COMPANY, a corporation, SHAWN )  
DEE THORNTON, an individual, )  
Fictitious Defendants A, B and/or C, )  
being those persons, firms, entities, or )  
corporations who owned, operated, )  
managed, maintained, inspected and/or )  
controlled the motor vehicle which struck )  
Plaintiffs' vehicle made the basis of this )  
civil action; Fictitious Defendants D, E )  
and/or F being those persons, firms, )  
entities, or corporations who caused or )  
contributed to the automobile accident )  
made the basis of this civil action; )  
Fictitious Defendants G, H and/or J, )  
being those persons, firms entities or )  
corporations who caused or contributed )  
to the damages and injuries suffered by )  
Plaintiffs made the basis of this civil )  
action; and Fictitious Defendants K, L )  
and/or M, being those persons, firms )  
entities or corporations whose negligence, )  
watnonness, willfull or other wrongful )  
conduct combined and concurred with the )  
conduct of the defendants herein causing )  
the injuries alleged herein. )**

**Defendants. )**

**COMPLAINT**

COME NOW Plaintiffs Helen Moody and Catherine Keaton, by and through their attorneys,  
complaining of Defendants Lowe's Home Centers, Inc., (hereinafter "Lowe's"), Allstate Insurance

Company (hereinafter "Allstate"), Shawn Dee Thornton (hereinafter "Thornton") and fictitious defendants A through M states as follows:

1. Plaintiffs Helen Moody and Catherine Keaton ("Plaintiffs") are residents of Brooklyn, New York and are over the age of nineteen (19) years.
2. Defendant Lowe's Home Centers, Inc. is a North Carolina corporation, doing business in Alabama, with its headquarters in North Wilkesboro, North Carolina.
3. Defendant Allstate Insurance Company is a Illinois corporation, doing business in Alabama, with its headquarters in Chicago, Illinois.
4. Defendant Shawn Dee Thornton is a resident of Montgomery Alabama and is over the age of nineteen years (19) years.
5. Fictitious Defendants A, B and/or C are those persons, firms, entities or corporations who owned, operated, managed, maintained, inspected, and/or controlled the motor vehicle which struck plaintiff's vehicle made the basis of this civil action.
6. Fictitious Defendants D, E and/or F are those persons, firms, entities or corporations who caused or contributed to the automobile accident made the basis of this civil action.
7. Fictitious Defendants G, H and/or J are those persons, firms, entities or corporations who caused or contributed to the damages and injuries suffered by Plaintiffs made the basis of this civil action.
8. Fictitious Defendants K, L and/or M are those persons, firms, entities or corporations whose negligence, wantonness, willful or other wrongful conduct combined and concurred with the conduct of the Defendants herein causing the injuries alleged herein.

**STATEMENT OF FACTS**

9. On or about April 23, 2005, Plaintiffs Helen Moody and Catherine Keaton (collectively "Plaintiffs") were traveling eastbound on Vaughn Road, near the intersection of East Boulevard in Montgomery, Alabama.

10. Defendant Shawn Dee Thornton ("Thornton") was also traveling eastbound on Vaughn Road and was traveling behind Plaintiffs. Thornton was being pursued by two Lowe's agents and/or employees on suspicion of shoplifting merchandise from the nearby Lowe's Home Center. Thornton failed to stop his vehicle and struck Plaintiffs' vehicle.

11. Upon information and belief, Thornton had shoplifted items from the nearby Lowe's Home Center and was being pursued by Fictitious Defendants K and L, Lowe's agents and/or employees.

12. Fictitious Defendants K and L, at all times material hereto were the duly authorized agents and/or employees of Defendant Lowe's, and were acting within the scope of their agency and employment.

13. Defendants owed a duty to Plaintiffs and others to operate their motor vehicles in a reasonably safe manner.

14. Defendants acted negligently, wantonly and/or willfully in their operation of their motor vehicles.

15. As a direct and proximate result of Defendants actions and/or omissions, Plaintiffs suffered severe personal injuries, severe physical pain, suffering and mental anguish and will continue to do so in the future. Plaintiffs have incurred medical expenses and will continue to do so in the future.

**COUNT I - NEGLIGENCE**

16. Plaintiffs re-allege and adopt by reference all allegations and averments contained hereinabove.

17. At said time and place, Defendants negligently caused a vehicle to collide with Plaintiffs' vehicle.

18. As a proximate result of Defendants' negligence, Plaintiffs were caused to sustain severe personal injuries, have incurred substantial medical expenses, and suffered greatly, both physically and emotionally. Plaintiffs continue to suffer pain and will continue to suffer from pain for as long as they will live. Plaintiffs sustained permanent disabilities.

WHEREFORE, PREMISES CONSIDERED, Plaintiffs Helen Moody and Catherine Keaton demand judgment against Defendants for a fair and reasonable amount of compensatory damages, plus costs of this action and any additional and further relief as the Court should deem appropriate.

**COUNT II - WANTONNESS**

19. Plaintiffs re-allege and adopt by reference all allegations and averments contained hereinabove.

20. At said time and place, Defendants wantonly caused a vehicle to collide with Plaintiffs' vehicle.

21. As a proximate result of Defendants' wantonness, Plaintiffs were injured and damaged as alleged in paragraph 18 above.

WHEREFORE, PREMISES CONSIDERED, Plaintiffs Helen Moody and Catherine Keaton demand judgment against Defendants for a fair and reasonable amount of compensatory damages,

mental anguish damages, punitive damages, attorneys fees, costs and any additional and further relief as the Court should deem appropriate.

**COUNT III - NEGLIGENCE/WANTON HIRING, TRAINING AND/OR SUPERVISION**

22. Plaintiffs re-allege and adopt by reference all allegations and averments contained hereinabove.

23. Defendant Lowe's negligently and/or wantonly hired, trained and/or supervised their agents and/or employees who pursued the shoplifter and directly contributed to the aforementioned injuries to Plaintiffs.

24. As a proximate result of Defendants' negligence and/or wantonness, Plaintiffs were injured and damages as alleged in paragraph 18 above.

WHEREFORE, PREMISES CONSIDERED, Plaintiffs Helen Moody and Catherine Keaton demand judgment against Defendants for a fair and reasonable amount of compensatory damages, mental anguish damages, punitive damages, attorneys fees, costs and any additional and further relief as the Court should deem appropriate.

**COUNT IV - NEGLIGENCE/WANTON ENTRUSTMENT**

\_\_\_\_ 25. Plaintiffs re-allege and adopt by reference all allegations and averments contained hereinabove.

26. Defendant Lowe's negligently and/or wantonly entrusted the vehicle their agents and/or employees used to pursue the shoplifter who struck Plaintiffs' automobile.

27. As a proximate result of Defendant Lowe's negligence and/or wantonness, Plaintiffs were injured and damaged as alleged in paragraph 18 above.

WHEREFORE, PREMISES CONSIDERED, Plaintiffs Helen Moody and Catherine Keaton demand judgment against Defendants for a fair and reasonable amount of compensatory damages, mental anguish damages, punitive damages, attorneys fees, costs and any additional and further relief as the Court should deem appropriate.

**COUNT V**

28. Plaintiffs re-allege and adopt by reference all allegations and averments contained hereinabove.

29. Defendant Allstate Insurance Company ("Allstate") is the uninsured/underinsured motorist carrier for Plaintiff Helen Moody, under policy number 043875328, which includes coverage for all claims herein.

30. Defendant Allstate has received notice of Plaintiffs' claims.

31. The amount of the policies and coverage which is available to Plaintiffs is due from Defendant Allstate for their injuries and damages.

32. This Count is based upon Section 32-7-23, Code of Alabama, (1975), as amended.

WHEREFORE, Plaintiffs demand judgment against Defendant Allstate Insurance Company in the full amount of all policies or coverages which are available to cover the claims referred to herein above and their costs.

Respectfully submitted this \_\_\_\_ day of January, 2007.

s/ Jason E. Gammons  
Mark M. Hogewood (HOG-005)  
Jason E. Gammons (GAM-026)  
Attorneys for Plaintiffs

**OF COUNSEL:****WALLACE, JORDAN, RATLIFF & BRANDT, LLC**

Post Office Box 530910

Birmingham, Alabama 35253

Telephone: (205) 870-0555

Facsimile: (205) 871-7534

**PLAINTIFFS DEMAND TRIAL BY STRUCK JURY ON ALL ISSUES OF THIS CAUSE**s/ Jason E. Gammons

Mark M. Hogewood (HOG-005)

Jason E. Gammons (GAM-026)

Attorneys for Plaintiffs

**OF COUNSEL:****WALLACE, JORDAN, RATLIFF & BRANDT, LLC**

Post Office Box 530910

Birmingham, Alabama 35253

Telephone: (205) 870-0555

Facsimile: (205) 871-7534

**DEFENDANTS TO BE SERVED BY CERTIFIED MAIL:**

Lowe's Home Centers, Inc.

Attn: Registered Agent

The Corporation Company

2000 Interstate Park Drive, Suite 204

Montgomery, Alabama 36109

Allstate Insurance Company

Attn: Registered Agent

The Corporation Company

2000 Interstate Park Drive, Suite 204

Montgomery, Alabama 36109

Shawn Dee Thornton

407 Green Ridge Road

Montgomery, Alabama 36109

## **EXHIBIT “B”**

**IN THE CIRCUIT COURT OF MONTGOMERY COUNTY, ALABAMA**

**HELEN MOODY and CATHERINE  
KEATON,**

**Plaintiffs,**

V.

**LOWE'S HOME CENTERS, INC.,  
ALLSTATE INSURANCE COMPANY  
and SHAWN DEE THORNTON,**

### Defendants.

**CIVIL ACTION NO. 07-900005**

**NOTICE OF FILING NOTICE OF REMOVAL**

**TO:** Ms. Melissa Rittenour  
Circuit Clerk, Montgomery County  
P.O. Box 1667  
Montgomery, AL 36102-1667

Notice is hereby given that, pursuant to 28 U.S.C. § 1441, et seq., Defendant Lowe's Home Centers, Inc. has filed a Notice of Removal in the United States District Court for the Middle District of Alabama, Northern Division, to remove Case Number CV 2007-900005 from the Circuit Court of Montgomery County, Alabama, to the United States District Court for the Middle District of Alabama, Northern Division. A copy of said Notice of Removal is attached hereto as Exhibit "A."

Respectfully submitted,

**s/JOSEPH E. STOTT**

ASB-4163-T71J

Attorney for Defendant Lowe's Home  
Centers, Inc.

**OF COUNSEL:**

**SCOTT, SULLIVAN, STREETMAN & FOX, P.C.**

2450 Valleydale Road  
Birmingham, AL 35244  
(205) 967-9675 - Telephone  
(205) 967-7563 - Facsimile  
jstott@sssandf.com - Email

**CERTIFICATE OF SERVICE**

I hereby certify that I have on April 5, 2007 served a copy of the foregoing on the following attorneys of record via Alafile Efile and/or by placing a copy of same in the U.S. Mail:

Jason E. Gammons, Esq.  
Mark M. Hogewood, Esq.  
Wallace, Jordan, Ratliff & Brandt, LLC  
Post Office Box 530910  
Birmingham, AL 35253

Celest Patton Armstrong, Esq.  
Varner & Associates  
Suite 200, 2600 Meadow Brook Street  
2600 Corporate Drive  
Birmingham, AL 35242

Mr. Shawn Dee Thornton  
407 Green Ridge Road  
Montgomery, AL 36109

**s/Joseph E. Stott**

OF COUNSEL